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Leading Optical Innovation

To: Michael Powell
Chairman
Federal Communications Commission

From: Eddie Edwards
President and Chief Executive Officer
OFS

Date: October 23, 2002

Re: Pending Broadband Regulations

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Federal Communications Commission
Office of the Secretary

As the second largest global supplier and a leader in optical fiber, cable and component technology, OFS commends and supports the Federal Communications Commission (FCC) efforts to reform outdated U.S. telecommunications laws. OFS is profoundly affected by severely diminished broadband investment and industry uncertainty resulting from these laws.

We know that by January, the FCC expects to act on three proposals for broadband regulatory reform centered around the Non-dominance Proceeding, the UNE Triennial Review Proceeding and the Defining ILEC Internet Access Proceeding.

We're concerned that the Commission's proposed regulations fail to differentiate between new and existing broadband deployment and between broadband and new broadband services. Instead, the Commission appears focused primarily on the organizational nature of the service provider. We believe that moving forward with the regulations without addressing this distinction will be a policy mistake that will lead to further confusion, inequity and instability in the market.

In order to increase deployment of bandwidth to consumers and increase investment in bandwidth, regulations must be designed to minimize costs and difficulties associated with all new broadband deployments regardless of the organizational nature of the service provider. This goal can best be accomplished by deregulating all new broadband deployments.

Specifically regarding the three issues currently pending before the Commission:

1. Non-Dominance Proceeding

We think the proposed rule questioning whether telephone companies should be considered "dominant" in the provision of broadband services is off-target. With digital

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technology, all broadband services are, by their nature, information services. Digital voice. video, and data bits are indistinguishable. This reality needs to be reflected in the new regulations.

To date, incumbent Carriers' (ILEC) legacy networks have provided only marginal advantage over telecommunications service competitors (CLECs and IXCs) given that ILECs must themselves invest in new equipment and open all their broadband facilities to competitors. At the same time, Cable Television organizations (MSOs), whose deployment of broadband is deregulated, have generated true facilities-based competition. ILEC telecom incumbency has not resulted in a broadband advantage while lack of regulation has given MSOs a significant broadband lead. By investing in broadband infrastructure, MSOs have achieved about 75% market share in contrast to the 25% of the broadband market captured by telecom carriers.

Clearly, ILEC historic telecommunications dominance has not carried over into broadband dominance.

2. To what extent should ILEC competitors have the right to demand and receive unbundled "pieces" of the ILEC's network at special rates under the UNE TELRIC pricing regulations?

ILEC's historic dominance in telecommunications services and *their* existing access networks has led to the deployment of dial-up modem and broadband DSL services under UNE regulations. *As* a result, a large and vital CLEC and ISP industry has developed which provides significant competition among DSL, voice, and dial-up internet service providers and the associated consumer benefits of provider choice. This important industry segment is dependent upon using existing unbundled ILEC network elements based *on* TELRIC pricing.

OFS thinks that the current UNEs and TELRIC pricing scheme should bc kept in place and not modified for all non-broadband telecommunication service applications as well as all *existing* broadband deployments where UNEs are already being utilized. However, since ILECs are clearly not dominant in broadband services and since existing UNE and TELRIC regulations only diminish investment in *new* broadband deployment, OFS supports creating a "carve out" from the status quo for all new broadband activity including converged voice, data, and video services. New broadband needs to be fully deregulated for true facilities-based competition to develop rather than just consumer choice among service providers offering similar services with similar equipment (the current telecom competitive situation with CLECs offering TELRIC-based price and provider choice).

As written, the regulations make no distinctions between new broadband and existing broadband deployment and between voice and dial-up modem telecommunications services and converged voice, video, and data broadband information services. We strongly recommend deregulation of all new broadband deployment, regardless of services carried, while maintaining the status *quo* on existing broadband and telecommunications services to ensure tho survival of CLECs and ISPs.

3. Legal Definition of ILEC broadband services.

We believe that broadband is inherently an "information service" where all digital bi[ts] whether voice, video, or data, are equal. This is distinct from traditionally defined voi[ce] oriented telecommunications service where either analog or digital circuit-switched vo[ice] or dial-up data services are provided.

One of the greatest advantages brought by today's DSL and Cable Modem a[nd] tomorrow's Fiber-to-the-Home (FTTH) services is their ability to carry converged voi[ce], video, and high-speed data services over a single network. While historic IL[EC] incumbent networks provide clear advantage in the provision of narrowband voice a[nd] dial-up modem telecommunications services. they provide no such advantage in t[he] deployment of new converged voice, video and data broadband information servic[es]. Thus, though broadband information services will naturally include voice traffic, they a[re] quite distinct from ILEC telecommunications services.

Therefore, OFS believes that any "converged" broadband service (i.e. where you have t[he] capability for voice, video and/or high-speed data *sharing* the same lines) should [be] defined as an information service regardless of which converged services are offered

We believe that unless the proposed regulations *are* modified to make a clear-c[ut] distinction between new broadband and existing broadband services. both t[he] telecommunications industry and its customers will be ill-served. Without the distincti[on], regulatory reform will be unable to achieve the goal of promoting new bandwi[dth] deployment and broadband investment, and will significantly harm *existing* competiti[on] by impeding the ability of the CLECs and independent ISPs to remain in business.

Finally, while we believe that modification of the regulations to deregulate all n[ew] broadband deployment will go a long way toward improving the condition of t[he] telecommunications industry, the proposed rules cover only a subset of the enti[re] telecommunications policy dilemma. By excluding issues such as recipro[cal] compensation, interLATA data transport, state regulation of broadband and a number [of] other significant policy issues. the regulatory playing field still remains somew[hat] undefined. OFS believes the most effective path to necessary reform is for the Bu[sh] Administration to unveil a comprehensive high-speed Broadband policy that balances t[he] needs of all parties and is designed to keep the United States at the fore of developi[ng] new broadband technology and applications

We appreciate your attention to our comments and would welcome the opportunity to discuss our concerns with you directly. I can be reached at 770/798-4265.